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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Applicant: Brookshire)	Art Unit: 3673
)	
Serial No.: 10/676,593)	Examiner: Kreck
)	
Filed: October 1, 2003)	1088.008
)	
For: SOLAR POWERED LANDFILL GAS)	October 20, 2004
EXTRACTION WELL)	750 B STREET, Suite 3120
)	San Diego, CA 92101
)	

APPEAL BRIEF

Commissioner of Patents and Trademarks
Washington, DC 20231

Dear Sir:

This brief is submitted under 35 U.S.C. §134 and is in accordance with 37 C.F.R. Parts 1, 5, 10, 11, and 41, effective September 13, 2004 and published at 69 Fed. Reg. 155 (August 2004). This brief is further to Appellant's Notice of Appeal filed herewith.

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(1) Real Party in Interest

The real party in interest is Landfill Gas & Environmental, now owned by The Shaw Group.

(2) Related Appeals/Interferences

No other appeals or interferences exist which relate to the present application or appeal.

(3) Status of Claims

Claims 1-3 and 5-20 are pending and twice rejected, and Claim 4 is canceled.

(4) Status of Amendments

No amendments are outstanding.

(5) Concise Explanation of Subject Matter in Each Independent Claim, with Page and Figure Nos.

As an initial matter, it is noted that according to the Patent Office, the concise explanations under this section are for Board convenience, and do not supersede what the claims actually state, 69 Fed. Reg. 155 (August 2004), see page 49976. Accordingly, nothing in this Section should be construed as an estoppel that limits the actual claim language.

Claim 1 recites a landfill gas extraction system that includes a fan module (12, page 3 last paragraph, shown in the only Figure) that is configured for communicating with methane in the landfill. A fan (34, page 4, second full paragraph) is disposed in the fan module to extract methane out of the landfill when the fan module is engaged with a landfill well of the landfill and the fan is activated. A battery (38, page 4, second

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to last paragraph) powers the fan, and a solar panel (46, page 4, second to last line) is electrically connected to the battery to recharge the battery. The fan module includes a fan pipe holding the fan and first and second flanges (14, 16, page 3, first paragraph of detailed description) are engaged with opposite ends of the fan pipe for mating with respective flanges (18, 20, id.) of a landfill well, with the fan being disposed between the flanges.

The reference numerals above are incorporated into this paragraph. Claim 9 recites a method for extracting gas from a landfill well that includes installing a fan module in the well. The fan module contains a DC-powered fan. The method includes energizing the fan using at least one battery to cause fluid to be exhausted from the well, and recharging the battery using at least one solar cell.

The reference numerals above are incorporated into this paragraph. Claim 15 recites a modular landfill gas extraction system that includes fan means in fluid communication with at least one landfill well for exhausting gas therefrom, battery means for powering the fan means, and solar power means for recharging the battery means.

(6) Grounds of Rejection to be Reviewed on Appeal

(a) Claims 1-3 and 7 have been rejected under 35 U.S.C. §102 as being anticipated by Adkins, II (USPN 5,131,888), or in the alternative under 35 U.S.C. §103 as being unpatentable over Adkins, II.

(b) Claims 6 and 8 have been rejected under 35 U.S.C. §103 as being unpatentable over Adkins, II.

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(c) Claim 5 has been rejected under 35 U.S.C. §103 as being unpatentable over Adkins, II in light of any one of Finley (USPN 776,310), West (USPN 349,549) or Bates (USPN 98,833).

(d) Claims 9, 11-18, and 20 have been rejected under 35 U.S.C. §103 as being unpatentable over Longo, Sr. (USPN 5,857,807) in view of Adkins, II.

(e) Claim 5 has been rejected under 35 U.S.C. §103 as being unpatentable over Longo, Sr. and Adkins, II in light of any one of Finley (USPN 776,310), West (USPN 349,549) or Bates (USPN 98,833).

(7) (a) Argument - Claim 1

As an initial matter, it is noted that according to the Patent Office, a new ground of rejection in an examiner's answer should be "rare", and should be levied only in response to such things as newly presented arguments by Applicant or to address a claim that the examiner previously failed to address, 69 Fed. Reg. 155 (August 2004), see, e.g., pages 49963 and 49980. Furthermore, a new ground of rejection must be approved by the Technology Center Director or designee and in any case must come accompanied with the initials of the conferees of the appeal conference, *id.*, page 49979.

Adkins, II shows an outhouse fan system, while Longo, Sr., is directed to a landfill having a "blower 28" for exhausting methane from the landfill wells without further elaboration about the blower. Accordingly, it is most likely that the blower 28 is a conventional landfill blower that is powered by the main AC electrical power grid.

Claim 1, which has been rejected under 35 U.S.C. §102 as being anticipated by Adkins, II, recites structure neither taught nor suggested in Adkins, II, namely, that the fan module is configured for engaging

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a landfill well (Adkins, II is for an outhouse). The anticipation rejection plainly is overcome. Further, the claimed fan is between the flanges. In Adkins, II the relied-upon fan 12 is not between the relied-upon flanges 13', 13'' but rather appears to be co-planar with the flange 13'' as shown in Figure 1 so that it can be located at the beginning of the outhouse exhaust pipe 21 as intended by Adkins. The examiner disagrees, alleging that Figure 1 "suggests" that the fan blades are below the flange, but it is simply unclear from Adkins, II that this is the case. Rejections cannot be based on "maybes" but rather on what is plain from the evidence of record.

(7) (b) Argument - Claims 9 and 15

The rejection proposes replacing Longo, Sr.'s blower with the fan of Adkins, II because the fan of Adkins, II is "inexpensive and portable".

Unfortunately for the *prima facie* case, the prior art nowhere motivates "inexpensive and portable" fans for use in landfills, as is otherwise required by MPEP §2143.01 (in seeking to establish a *prima facie* case of obviousness, it must be identified where the prior art provides a motivating suggestion to make the modifications proposed, citing In re Jones). "To imbue one of ordinary skill in the art with knowledge of the invention, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome", Al-Site Corp. v. VSI Int'l. Inc., 174 F.3d 1308, 50 USPQ.2d 1161 (Fed. Cir. 1999).

Longo, Sr. nowhere suggests that its fan is too expensive (indeed, solar cells are not inexpensive in the first place), or that portability is required. The reason Adkins, II motivates portability - because it is

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installed in a movable outhouse - is simply not present in the landfill art. Landfills do not move. Thus, the motivation in Adkins, II to use a portable fan system bears no relevance to anything taught in Longo, Sr.

Indeed, only the present invention has made the critical observation that is lacking in the cited references to use a solar-powered fan in landfills. Specifically, as set forth in the present background, "as recognized by the present invention, many landfills may lack the electrical infrastructure to power the various components that are needed to actively eliminate methane from a landfill. Installing the necessary infrastructure can be prohibitively costly." When a patent applicant makes a critical observation that has not been made before and then provides a solution, that is not indicative of obviousness, but rather the opposite - independent Claims 9 and 15 are patentable.

This accurate exposition of the law of obviousness has been met by the examiner with some boilerplate from the MPEP, evidently without realizing that if the salient assumption underpinning the cited boilerplate is missing, namely, that if no suggestion exists to do what an examiner proposes to do to a reference, either in the prior art (absent in this case) or the general knowledge of the art (no evidence of record as this element), the rejection remains improper.

(7) (c) Argument - Claim 1

Regarding the alternative rejection of Claim 1 as being unpatentable over Adkins, II, for the reasons set forth above in subsections (a) and (b), it is believed that Claim 1 is patentable.

(7) (d) Argument - Claims 6 and 8

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Claims 6 and 8 have been rejected under 35 U.S.C. §103 as being obvious over Adkins, II in view of Official Notice. Specifically, "official notice" has been taken of 12 volt batteries and of voltage regulators, implicitly finding not only that these elements are well known but that their incorporation into the specific structure claimed is also well-known. But simply observing that an element is well known, without also showing a prior art suggestion to combine it in the particular combination claimed, satisfies only half the requirement for making a *prima facie* case. In any case, Applicant's seasonable request for a prior art showing that 12 volt batteries are "well known" in the particular context claimed - battery-powered landfill well exhaust fans - has been ignored, contrary to MPEP §2144.03.

(7) (e) Argument - Claim 5

Claim 5 has been rejected under 35 U.S.C. §103 as being obvious over Adkins, II in view of various secondary references allegedly showing support rods, based on the allegation that it would have been obvious to use support rods in Adkins, II for "strength". However, nowhere has an identification been made of where Adkins, II might suggest the need for greater strength in its rather small, portable outhouse fan system. Accordingly, regardless of whether such rods are known, absent a specific reason that is relevant to Adkins, II to use the rods (note that the present claims cannot be used as a template to reconstruct the prior art), the proffered suggestion to combine falls for failing to find prior art support.

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APPENDIX A

1. A landfill gas extraction system, comprising:
 - at least one fan module configured for communicating with methane in the landfill;
 - at least one fan disposed in the fan module to extract methane out of the landfill when the fan module is engaged with a landfill well of the landfill and the fan is activated;
 - at least one battery for powering the fan;
 - at least one solar panel electrically connected to the battery to recharge the battery, the fan module comprising:
 - a fan pipe holding the fan and first and second flanges engaged with opposite ends of the fan pipe for mating with respective flanges of a landfill well, the fan being disposed between the flanges.
2. The system of Claim 1, wherein the fan is a DC-powered fan.
3. The system of Claim 2, wherein the fan is an axial fan.
5. The system of Claim 1, further comprising at least one support rod extending through at least two flanges.
6. The system of Claim 1, wherein the battery is a rechargeable lead acid twelve volt battery.
7. The system of Claim 1, wherein the solar panel includes an array of solar cells for converting sunlight to electricity.
8. The system of Claim 1, further comprising a voltage controller electrically disposed between the battery and solar panel to maintain a predetermined voltage to the battery.
9. A method for extracting gas from a landfill well, comprising:
 - installing a fan module in the well, the fan module containing at least one DC-powered fan;
 - energizing the fan using at least one battery to cause fluid to be exhausted from the well; and
 - recharging the battery using at least one solar cell.
10. The method of Claim 9, further comprising securing engagement of the fan module with the landfill well using at least one support rod.
11. The method of Claim 9, wherein the battery is a twelve volt lead acid battery, and is the sole source of power for the fan.
12. The method of Claim 9, wherein the fan is an axial fan.

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13. The method of Claim 9, comprising exhausting gas from the well at a rate of about forty standard cubic feet per minute or greater.
14. The method of Claim 9, comprising maintaining twelve volts DC to the battery.
15. A modular landfill gas extraction system, comprising:
fan means in fluid communication with at least one landfill well for exhausting gas therefrom;
battery means for powering the fan means; and
solar power means for recharging the battery means.
16. The system of Claim 15, wherein the fan means includes at least one DC-powered fan disposed in a fan module, the battery means includes a lead acid battery, and the solar power means includes at least one solar panel.
17. The system of Claim 16, wherein the fan is an axial fan.
18. The system of Claim 16, wherein the fan module includes a fan pipe holding the fan and first and second flanges engaged with opposite ends of the fan pipe for mating with respective flanges of the landfill well.
19. The system of Claim 18, further comprising at least one support rod extending through at least two flanges to securely hold the fan module in engagement with the landfill well.
20. The system of Claim 16, further comprising voltage control means electrically disposed between the battery and solar panel for maintaining twelve volts to the battery.

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APPENDIX B - EVIDENCE

None (this sheet made necessary by 69 Fed. Reg. 155 (August 2004), page 49978.)

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APPENDIX C - RELATED PROCEEDINGS

None (this sheet made necessary by 69 Fed. Reg. 155 (August 2004), page 49978.)

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